

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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| MICHAEL S. MILEY, a/k/a MICHAEL S. MILLER, <div style="text-align: right;">Plaintiff,</div> | } } } } } } } } } } } } } | No. 04-365 Erie Judge McLaughlin Magistrate Judge Baxter |
| vs. | } | |
| KARLA WEBB, Counselor; BENJAMIN MARTINEZ, Chairman; and PENNSYLVANIA BOARD OF PAROLE AND PROBATION, <div style="text-align: right;">Defendants.</div> | } } } } } } } } | |

**DEFENDANTS' MOTION TO DISMISS OR,
IN THE ALTERNATIVE FOR SUMMARY JUDGMENT**

AND NOW, come the defendants, Webb, Martinez and the Pennsylvania Board of Parole and Probation, by their attorneys, Thomas W. Corbett, Jr., Attorney General, Scott A. Bradley, Senior Deputy Attorney General, and Susan J. Forney, Chief Deputy Attorney General, Chief Litigation Section, and, pursuant to Rule 12 of the Federal Rules of Civil Procedure, respectfully moves the Court to dismiss the Complaint heretofore filed by plaintiff Michael Miley, upon the following grounds:

1. The Complaint fails to state a claim arising under the United States Constitution or under any other federal law or statute.

2. Alternatively, and pursuant to Rule 56 of the Federal Rules of Civil Procedure, the Defendants are entitled to summary judgment on Plaintiff's claims.

3. The Defendants have herewith filed a Brief in Support of this Motion, providing reasons in support of the foregoing assertions with greater particularity; the contents therein are incorporated by reference.

4. The following documents have been attached hereto as Exhibits herein:

Exhibit 1-Transcript of the Docket (OTN-H055874-0) Commonwealth v. Miley;

Exhibit 2-Order of Court (No. 253 of 2000)(12-01-00) Commonwealth v. Miley;

Exhibit 3-PBPP, Sentence Profile, Michael Lee Miley (EM-5931);

Exhibit 4-DOC, Sentence Status Summary, Michael Lee Miley (EM-5931);

Exhibit 5-DOC, Prescriptive Program Plan (02-00-03), Michael Lee Miley (EM-5931);

Exhibit 6- DOC, Prescriptive Program Plan (01-09-04), Michael Lee Miley (EM-5931);

Exhibit 7-PBPP, Notice of Board Decision (04-04-03), Michael Lee Miley (EM-5931);

Exhibit 8-PBPP, Notice of Board Decision (03-22-05), Michael Lee Miley (EM-5931).

WHEREFORE, it is respectfully requested that the instant Complaint be Dismissed or, in the alternative, that Summary Judgment be Granted in favor of the Defendants and against the Plaintiff.

Respectfully submitted,

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Date: July 11, 2005